

**EXPERT REBUTTAL REPORT OF  
PINHAS SHMILOVITCH**

**Prepared for:**

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**I. Introduction**

1. A statement of my background and qualifications is set forth in my initial Expert Report, which I submitted on February 22, 2011.
2. My general opinions and the bases for those opinions are also set forth in my initial Expert Report, and will not be repeated here except to the extent necessary to rebut specific items in the expert reports of plaintiffs' expert witnesses Mr. Matthew Levitt and Mr. Arieh Dan Spitzen.

3. I was asked by counsel for Arab Bank to review the expert reports of Mr. Levitt and Mr. Spitzen, and in particular to comment upon their conclusions concerning the so-called "da'wa" system or infrastructure of civil entities in the Palestinian Territories. Specific questions I was asked to address include:

- A. **Is there a "da'wa" system of civil entities in the Palestinian Territories?**
- B. **Are the civil entities characterized by Mr. Levitt and Mr. Spitzen as a "da'wa" system controlled by Hamas in order to recruit terrorists and support its terrorist activities?**
- C. **Other observations of the reports and conclusions of Mr. Levitt and Mr. Spitzen.**

In addition, from my review of the reports of Mr. Levitt and Mr. Spitzen, I offer some observations concerning the methods by which they apparently reached their conclusions.

4. For security reasons, the content of my responses, including information, assessments and conclusions contained herein, is based on open source unclassified information and does not rely on, or reveal, any privileged or classified information to which I was exposed as part of my ISA job.

5. Prior to submission, this report was forwarded to ISA to ensure state secret protection and no violation of security protocols and/or the laws of Israel. However, the ISA's approval does not reflect its confirmation or consent to the information and assessments contained in this report which was written on my own accord and reflects my opinion only.

## **II. Discussion**

### **A. Is there a “da’wa” system of civil entities in the Palestinian Territories?**

6. Mr. Levitt discusses a “da’wa infrastructure.” (Levitt Report at 20). Mr. Spitzen likewise discusses a “da’wa infrastructure of Hamas.” (Spitzen Report at 20). The concept of this single, unified infrastructure of Palestinian civil entities which can be and is controlled by a single organization – namely Hamas – lies at the heart of both of these witnesses' opinions. Based on my experience and knowledge, that concept is wrong. Da ’wa is an idea or vision, embodying the principles of the Islamic movement whose goal is to fulfill a social and political world order based on the Islam religion.

7. There is no single unified “da’wa” system or single “framework” of civil entities in the Palestinian Territories. There is no one organization or hierarchical structure that can or does control the activities of the civil entities in the Palestinian Territories. To the contrary, the activities of these civil entities are independent and decentralized.

8. Hundreds of charitable organizations, orphanages, schools, hospitals and other civil entities operate independently throughout the Palestinian Territories to provide needed humanitarian and social services to the Palestinian people. These civil entities are managed by a diverse array of local leaders, and the interaction between and among these

civil entities is usually based on geographic location (a city and the villages around it) and not on hierarchic structure.

**B. Are the civil entities in the Palestinian Territories controlled by Hamas to recruit terrorists and support its terrorist activities?**

9. Just as Mr. Levitt and Mr. Spitzen are mistaken to refer to a single, unified civil system in the Palestinian Territories, so are they mistaken to conclude that Hamas controls and operates such a system of civil entities for the purpose of fulfilling its terrorist agenda.

10. I disagree with the conclusions of Mr. Levitt and Mr. Spitzen that Palestinian charities, orphanages, schools, hospitals and other civil entities have been used “to incite, recruit and provide logistical support” for terrorism (Levitt Report at 32), or as a “reservoir of new recruits for suicide attacks and for Hamas’ terror and murder apparatus” (Spitzen Report at 26). I believe that these civil entities were founded, first and foremost, to cater to the needs of the Palestinian people. Any isolated occasions on which activists in those civil entities were also found to be affiliated with terror activities do not implicate as a whole the activities of the civil entities operating in the Palestinian Territories.

11. Moreover, based on my experience and knowledge, it has never been proven that the receipt of welfare or other social services, which the vast majority of Palestinian people require and receive, encourages or somehow obligates recipients to actively support terrorism.

12. There have been some specific Palestinian charitable organizations and other civil entities that the Israeli security authorities have concluded, on a case-by-case basis and only with the development over time of solid evidence, were run by individuals

directly involved with terrorist activities (whether of Hamas or other organizations). In those cases, the Israeli security authorities took measures against those individuals, and to the extent necessary the entities, to address any activities that threatened Israeli security.

13. In order to determine the connection of any individual or civil entity with terror activities, the Israeli security authorities relied on intelligence resources and the types of sources of information described in my initial report (i.e., "HUMINT", "SIGINT", "OSINT", and "VISINT").

14. During the time period I understand to be relevant to these lawsuits, through 2004, to my recollection the Israeli security authorities made the determination with respect to only two dozen or so Palestinian civil entities, out of the many hundreds in existence, that they were knowingly and actively involved in terrorist activities.

15. There were other civil entities operated by individuals sympathetic to Hamas, in the sense they supported the Hamas's intra-Palestinian political movement (in much the same way more than 40% of the Palestinian population did in the 2006 elections). This did not mean, however, that those individuals, or more importantly the civil entities they operated, were actively involved in the terrorist activities of Hamas.

16. If there was a civil infrastructure that was used to execute terrorist activities against Israel, Israel would have declared it as an illegitimate entity, which Israel has not done.

**C. Other observations of the reports and conclusions of Mr. Levitt and Mr. Spitzen.**

17. The conclusions of Mr. Levitt and Mr. Spitzen are not consistent with my experience and knowledge.

18. The extensive reliance by Mr. Levitt and Mr. Spitzén on internet sources, which do not constitute solid information sufficient for the Security Community, is cause for questioning the reliability of the information on which their conclusions are based.

19. I also take issue with the conclusions of Mr. Spitzén's that rely on a formula using 18 criteria to evaluate any particular entity's control by Hamas or connection to terrorism. I disagree with the said methodology. Mr. Spitzén's criteria can not be used as a definitive and reliable basis for his determinations and conclusions.

20. Based on my experience, my opinion concerning the reports of Mr. Levitt and Mr. Spitzén is that they present analyses and methodologies that are not based on solid, reliable information, but rather based on partial information which raises many doubts with respect to their conclusions.

Pinhas Shmilovitch

Signed before me on April 14, 2011:

